From: California Ct App - Justia Daily Opinion Summaries
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Subject: Latest 9 Cases: Marriage of Ankola (Civil Procedure), Hanna v. Mercedes-Benz USA (Civil Procedure), Tanguilig v. Valdez (Civil Procedure)
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June 21, 2019

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Legal Analysis and Commentary

Christians Win Again in the Supreme Court

LESLIE C. GRIFFIN

verdict post

UNLV Boyd School of Law professor Leslie C. Griffin discusses the decision by the U.S. Supreme Court earlier this week upholding the display of a World War I memorial cross on public land. Griffin argues that the majority erroneously and unnecessarily complicated the question asked by the Establishment Clause, effectively forgetting that the United States is not a Christian nation and that the Constitution requires the government not to prefer one religion over any other (or none at all.

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California Courts of Appeal Opinions

Marriage of Ankola

Docket: H045899(Sixth Appellate District)
Opinion Date: June 20, 2019
Judge: Eugene M. Premo
Areas of Law: Civil Procedure, Family Law

Manish and Priyanka married in 2014. Manish filed a petition for nullity of marriage in December 2015, alleging that the marriage was voidable based on fraud. Priyanka filed a response, denying the allegations but requesting a dissolution of the marriage due to irreconcilable differences. In May 2016, Priyanka filed a request for a domestic violence restraining order (DVRO). In September 2016, the trial court denied both Manish's petition and Priyanka's request for a DVRO. In February 2017, Priyanka filed a new DVRO request, which was granted with a five-year duration. The next day, Manish sought a DVRO against Priyanka. Priyanka denied the allegations but did not file a separate request for another DVRO against Manish. Manish denied committing any acts of domestic violence but admitted sending a letter to Priyanka's employer. Priyanka denied ever hitting Manish but admitted that on two occasions she pushed him away because he was too close to her. The court made a finding under Family Code Section 6305 that each party has committed acts of domestic violence and entered a mutual restraining order. The court of appeal concluded that the trial court lacked authority to impose a mutual restraining order because Priyanka had not filed a separate written request for such an order as required by section 6305(a)(1).

Read Opinion Are you a lawyer? **Annotate this case**.

Hanna v. Mercedes-Benz USA

Docket: B283776(Second Appellate District)
Opinion Date: June 18, 2019
Judge: Dennis M. Perluss
Areas of Law: Civil Procedure, Legal Ethics

Plaintiff appealed the trial court's award of fees following a settlement of plaintiff's lawsuit against Mercedes-Benz. Determining that it had jurisdiction, the Court of Appeal held that plaintiff was entitled to recover reasonable attorney fees for legal services performed after the January 2016 Code of Civil Procedure section 998 offer to compromise; the trial

court erred by failing to use the Lodestar Method for the award of fees incurred after the January 2016 section 998 offer to compromise; and the trial court did not abuse its discretion in disallowing costs for plaintiff's first expert.

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Tanguilig v. Valdez

Docket: A151994(First Appellate District)
Opinion Date: June 19, 2019
Judge: Stewart
Areas of Law: Civil Procedure, Real Estate & Property Law

Tanguilig, then 74 years old, sought a restraining order against his neighbor, Valdez, under Welfare and Institutions Code section 15657.03, alleging elder abuse. Tanguilig also sought protection for four members of his family, including his son-in-law Rutledge, all of whom lived in the same house. Tanguilig alleged that Valdez placed his trash cans in a way that blocked access to the Tanguilig driveway and that Valdez assaulted Tanguilig by spraying him with his garden hose through the fence. The court issued a temporary restraining order prohibiting Valdez from engaging in conduct that was abusive to Tanguilig but concluded Tanguilig had provided insufficient facts to support an order restraining Valdez from contact with others; besides family members, Tanguilig asserted that Valdez was harassing workers on his property. Valdez filed a response, denying Tanguilig's allegations. The court, without swearing anyone in as a witness, heard from Valdez, Rutledge, and Tanguilig about what had occurred. The court found that Tanguilig had provided "reasonable proof by a preponderance of the evidence" of elder abuse and issued a three-year "no harassment" order against Valdez in favor of Tanguilig and the named family members. The court of appeal affirmed, rejecting arguments concerning the court's consideration of statements by Rutledge; the burden of proof; and the court's consideration, or lack of consideration, of Valdez's "mens rea."

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Pearl v. City of Los Angeles

Docket: B285235(Second Appellate District)
Opinion Date: June 18, 2019
Judge: Dennis M. Perluss
Areas of Law: Civil Procedure

The trial court in its role as an independent factfinder had the authority to condition a denial of a new trial motion asserting excessive damages on plaintiff's acceptance of a reduced award in accordance with Code of Civil Procedure section 662.5. After a jury awarded plaintiff past and future noneconomic damages in his employment action, plaintiff agreed to a remittitur reducing past economic damages, and the trial court denied the city's new trial motion, entering an amended judgment. The Court of Appeal affirmed the trial court's judgment and held that the trial court did not abuse its discretion in conditionally granting the new trial motion on plaintiff's acceptance of a reduction in damages.

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Park Management Corp. v. In Defense of Animals

Docket: A148425(First Appellate District)
Opinion Date: June 20, 2019
Judge: Stewart
Areas of Law: Communications Law, Constitutional Law, Real Estate & Property Law

Six Flags, a Vallejo amusement park, features rides and animal attractions on 138 acres, including a ticketed interior portion with the entertainment activities and an exterior portion with an admissions area connected by walkways and streets to a paid parking lot. The property falls within the city's "public and quasi-public facilities zoning district." For many years, the amusement park was municipally owned but privately operated. In 2006, a federal district court recognized the constitutional right of an individual to protest at the park's front entrance, which is public fora under California's free speech clause. The following year, Park Management exercised its option and acquired the park from the city for $53.9 million; the city committed to retaining the park's zoning designation. Management agreed to pay the city a percentage of annual admissions revenue. The city's redevelopment agency agreed to finance the construction of a new parking structure on publicly owned fairgrounds for lease to Management. In 2014,

Management banned all expressive activity at the park, including protests. Weeks later, people protested against the park's treatment of animals at the front entrance area and handed out leaflets in the parking lot. The police and the district attorney declined to intervene without a court order. Management filed suit, alleging private trespass. The trial court granted Management summary judgment. The court of appeal reversed. While a long-time protestor failed to prove as a matter of law that he has acquired a common law prescriptive right to protest at the park, the exterior, unticketed areas of the amusement park are a public forum for expressive activity under California Constitution article I, section 2.

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California v. Superior Court (K.L.)

Docket: C088735(Third Appellate District)
Opinion Date: June 19, 2019
Judge: Ronald B. Robie
Areas of Law: Constitutional Law, Criminal Law, Juvenile Law

This case presented a narrow question of whether Senate Bill No. 1391 (Stats. 2018, ch. 1012, section 1) (S.B. 1391) was void as an unconstitutional amendment to Welfare and Institutions Code section 707 as modified by the Public Safety and Rehabilitation Act of 2016 (Proposition 57). The State filed two petitions for a writ of mandate seeking relief from separate orders by respondent Superior Court of Sacramento County, which refused to transfer real parties in interest R.Z. and K.L. from juvenile to criminal court for purposes of criminal prosecution based on section 707 as modified by legislative enactment of S.B. 1391. The State charged K.L., 15 at the time of the alleged conduct, with felony murder, attempted murder and shooting into an occupied vehicle, with additional allegations K.L. personally discharged a firearm causing death or great bodily injury, all in association with involvement with a street gang. R.Z. was also 15 at the time of the alleged conduct, arraigned on a juvenile petition because he committed murder and personally discharged a firearm causing great bodily injury or death in the commission of the homicide. The trial court found R.Z. unfit for juvenile court and granted the State's motion transferring R.Z. to criminal court. However, the trial court stayed execution of that order until January 2019 so that it could determine the effect of S.B. 1391 on its order

transferring the minor. Over the State's opposition, on January 10, 2019, the trial court dismissed the motion to transfer R.Z. to criminal court, vacated its prior order transferring the minor, and sent the matter to juvenile court. The State argued S.B. 1391's bar on the transfer of minors under the age of 16 for criminal prosecution as adults was unconstitutional because it did not further the intent and purpose of Proposition 57. The Court of Appeal disagreed and denied the State's petitions for mandamus relief.

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People v. Bankers Insurance Co.

Docket: H045635(Sixth Appellate District)
Opinion Date: June 19, 2019
Judge: Danner
Areas of Law: Criminal Law

Bankers posted a $25,000 bail bond for the defendant for misdemeanor charges. Defendant had a court date of July 19, at 1:30 p.m. On July 19, during the afternoon session, the trial court stated on the record that defense counsel "just walked in at 3:40. He indicates that he called, and he didn't leave his name…. five minutes ago, I issued warrants …. Now that [defense counsel] has appeared, … the bench warrant issued is recalled.... The bond is reinstated since we never sent notice ... no fault of the defendant's and no costs." The box on the minute order for "Bail Forfeited" appears to have been checked and then crossed out; the order indicates the court gave the defendant a new court date and did not order a bench warrant. On October 25, neither the defendant nor his attorney appeared. The trial court forfeited the bail bond; the clerk mailed a notice of bail forfeiture the following day. In May 2017, Bankers moved to vacate the bond forfeiture and exonerate the bail bond based on the clerk's failure to mail a notice of forfeiture following the July 19 hearing, Penal Code 1305(b). The court of appeal affirmed the denial of Bankers' motion. The trial court retained jurisdiction over the bond. A trial court may correct a finding of forfeiture, just as it may correct other matters brought to its attention, during a calendar session.

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People v. Perry

Docket: F074841(Fifth Appellate District)
Opinion Date: June 18, 2019
Judge: Snauffer
Areas of Law: Criminal Law

Defendant, a former police officer, challenged his conviction for unnecessarily assaulting or beating another person while acting under color of authority. The Court of Appeal held that Penal Code section 149 is governed by the same standards as those applied in the Fourth Amendment context; an unlawful arrest or detention alone is not a legally valid basis for conviction under section 149; the prosecutor's arguments and the trial court's instructions in this case erroneously invited the jury to find that defendant violated section 149 by unlawfully arresting plaintiff. Accordingly, the court reversed the judgment because the record revealed no basis to conclude that the jury necessarily rested its verdict on a valid theory of guilt. However, the court found that there was substantial evidence to support conviction on a valid theory that defendant used more force than would have appeared necessary to a reasonable officer on the scene. Consequently, the court concluded that retrial is permitted.

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Eisen v. Tavangarian

Docket: B278271(Second Appellate District)
Opinion Date: June 20, 2019
Judge: Dennis M. Perluss
Areas of Law: Real Estate & Property Law

The trial court granted an injunction in favor of plaintiffs, finding that defendants violated the view protection provisions of paragraphs 1 and 11 of the covenants, conditions and restrictions (CC&R's) applicable to the parties' neighboring properties in the Marquez Knolls section of the Pacific Palisades. The trial court then ordered removal of certain alterations and improvements made by defendants and awarded plaintiff interim damages for their loss of view. The Court of Appeal held that neither paragraph 1 nor paragraph 11 of the CC&R's restricts renovations or alternations to a

previously approved residence. Furthermore, paragraph 2, which did apply to residential alterations, has long since expired. Accordingly, the court reversed the trial court's judgment except the portion of the judgment requiring the street-facing hedges to be trimmed to a height of three feet or under was affirmed. Therefore, the court remanded with directions for the trial court to conduct a new trial on damages.

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